

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Ricky Dean Tate,)	Civil Action No. 9:09-0839-TLW-BM
)	
Plaintiff,)	<u>REPORT AND RECOMMENDATION</u>
v.)	
Warden Michael McCall; Sgt. Barnes, Major Dennis Bush, Lt. Tamara Conwell, and Ofc. John Moets,)	
)	
Defendants.)	
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This matter was filed by the Plaintiff, pro se, on April 2, 2009 wherein he alleged a violation of his constitutional rights under 42 U.S.C. § 1983. Defendants filed an answer on May 15, 2009, and a motion for summary judgment on July 28, 2009. The Court has now received a motion from the Plaintiff seeking dismissal of this case without prejudice pursuant to Rule 41, Fed.R.Civ.P.¹ Defendants have advised the Court that they have no objection to this motion. See Court Docket No. 24.

Pursuant to Rule 41(a)(2), unless a stipulation of dismissal signed by all the parties is submitted, an action shall not be dismissed in a case in which a responsive pleading has been filed except upon order of the Court and upon such terms and conditions as the Court deems proper. Here, Plaintiff has advised the Court that he wishes to voluntarily dismiss this case. As the Plaintiff is proceeding pro se, and pro se litigants are traditionally treated with some degree of leniency by the

¹ This case was automatically referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 19.02(B)(2)(d) and (e), D.S.C. As Plaintiff's motion is a dispositive motion, this report and recommendation is entered for review by the court.



Federal Courts, see Cruz v. Beto, 405 U.S. 319 (1972) and related cases, and as the Defendants have no objection to the dismissal of this case, it is recommended that this case be dismissed without prejudice pursuant to Rule 41(a)(2), Fed.R.Civ.P.

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

August 24, 2009

Charleston, South Carolina



Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 2940

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

